

Mr. Russheden, Mr. Townssende, and Mr. Herry, were the Serjeants elect, and each of them had presented to him the sum of £5.

In these notes I am attempting to trace the history of the teaching of English law in England from the time of Henry II. to the institution of the Council of Legal Education by the four Inns of Court in the year 1851. This history may be conveniently divided into three periods: the first ending about the middle of the sixteenth century; the second at the Restoration; and the third extending to the foundation of the modern system under the control of the Council of Legal Education, and, I ought to add, the Incorporated Law Society. In the extracts from Fortescue, from the Report of Sir Nicholas Bacon, and from the Black Books of Lincoln's Inn, I have endeavoured to present a picture of the methods of legal education during the first of these periods, and of its condition at the expiration of that period about the middle of the sixteenth century.

(To be continued.)

III.—THE ALASKAN BOUNDARY QUESTION.

IN the matter of the boundary line between Alaska and Canada, there have been numerous discussions in the newspapers and magazines, giving both sides of the question.

Perhaps the most notable recent articles which have been widely read in America, are, one by Mr. Horace Townsend (an Englishman, now resident in the United States, but long in Canada) in the *Fortnightly Review* for September, one by the Hon. J. B. Moore, formerly Assistant Secretary of State of the United States, in the *North American Review* for October, and, most extended and comprehensive of all, one by the Hon. John W. Foster, formerly Secretary of State of

the United States and undoubtedly the leading diplomatic authority of that country, in the *National Geographic Magazine* for November. The latter article contains careful reproductions of many maps bearing upon the discussion. To summarize from them and many less extensive articles, it would seem that the main dispute arises as to the interpretation of the passage in the Convention entered into in 1825 by Great Britain and Russia, fixing the boundary in question. The original text of the Convention is in the following words: "*La limite entre les Possessions Britanniques et la lisière de Cote mentionnée ci-dessus comme devant appartenir a La Russie sera formée par une ligne parallèle aux sinuosités de la cote et qui ne pourra jamais en être éloignée que de dix ligues marines.*"

The American claim is that the strip of territory assured to Russia (to whose title the United States succeeded by purchase) is to be measured from the shore of every bay or harbour, following the sinuosities of the coast. The Canadian claim is that it shall be measured from the border of the open sea. The coast is sheltered by an archipelago of about one thousand islands, many of great size, and the Canadian contention would give some of these and many harbours, notably Lynn Canal, a deep fjord some sixty miles long by six miles wide, to Canada. At the head of this fjord are two principal American settlements, Skagway and Dyea, and also Pyramid Harbour, which are convenient to passes leading to the Canadian goldfields.

Mr. Foster shows that Russia, in the negotiations just prior to 1825, insisted on a continuous holding on the main land for the express purpose of protecting her establishments in the islands, and that England finally conceded her claim in this respect and was prepared to make the strip fifty to one hundred miles wide. That the negotiation was as to whether the boundary should be at the summit or shoreward base of the chain of mountains supposed to run parallel to the shore, that it was finally fixed at the summit with this provision,

that it should never exceed ten marine leagues from the coast. That the negotiators had three maps before them, that of Van Couver, that prepared by the quartermaster's department of St. Petersburg, and Arrowsmith's map. The two former show this range rounding all the bays and inlets including Lynn Canal, the last omits all mountains. The negotiation plainly intended to conform the boundary to this supposed mountain range so outlined, and the language of the convention is perfectly apt for that purpose.

It was so understood at once by both high contracting parties and all cartographers the world over.

As soon as possible (1827) a map was published in St. Petersburg "by order of His Imperial Majesty" showing the line as now claimed by the United States, inscribed "*Limites des Possession Russes et Anglaises d'Après la Traité de 1825.*" The map-maker to his Britannic Majesty adopted and followed this line, and Arrowsmith's map of 1832, which claims to contain the latest information from the Hudson Bay Co., exactly copies the Russian map as to this boundary.

A year before, a map prepared by Bouchette, deputy surveyor general of Lower Canada, and published by Wyld, geographer to the King, and, by permission, dedicated to His Majesty, traces the boundary in the same way.

A map of 1857, prepared by order of the Commissioner of Crown Lands, Toronto, does the same, and no map seems known, whether English, Canadian, American, or of other origin down to 1898, or seventy-three years after the treaty, which indicated any other interpretation than the American. A map by William Ogilvie, astronomer and land surveyor, published in the *Scottish Geographic Magazine* at Edinburgh, July 1898, is one of the latest British maps so indicating the boundary.

To farther show that the harbours and bays were certainly intended to be assured to Russia, by the seventh article of the convention, the vessels of the two powers and their

subjects were, for ten years, allowed to frequent "all the inland seas, gulfs, havens, and creeks on the coast mentioned." Russia terminated the British privilege at the end of ten years, and this plainly shows her exclusive sovereignty over the same.

By authority of both Governments, representatives of the Russian American Co., holding the land under Russia, and the Hudson Bay Co. met at Hamburg in 1839 and agreed upon a lease by the former to the latter of this very strip of territory now debated, and "all bays, inlets, estuaries, rivers, or lakes in that line of coast" for an annual rental, originally, of 2000 otters. Sir George Simpson, Governor of the Hudson Bay Co., signed the lease. It was continued with the consent of both Governments until 1865, and the territory was, by arrangement between the two nations, exempted from hostile operations during the war of the Crimea. In 1857 before a committee of the House of Commons on the British possessions in North America administered by the Hudson Bay Co.—which included Lord John Russell, Lord Stanley, and Mr. Gladstone, and was attended by Chief Justice Draper of Canada, as representative of the Dominion—Sir George Simpson testified in detail as to the said lease, and showed a map exhibiting the tract leased "marked yellow on the map." On this map the yellow territory surrounded all the inlets.

No question was raised by any one from the committee or by the Canadian representative. In 1873 Sir E. Thornton, British Minister at Washington, had a conference with Mr. Fish, Secretary of State of the United States, as to a survey of this boundary, and it was suggested that it would be sufficient to determine the points where the boundary line crossed certain rivers flowing into the heads of Lynn Canal and other inlets. Sir Edward having duly submitted this through the home Government to the Canadian Government, the latter referred it to its surveyor general, who reported

favourably thereon, and the negotiation was accordingly concluded, but the survey was not made for lack of an appropriation. This would seem to recognize the boundary line as above the head of Lynn Canal and other inlets.

In 1876, one Peter Martin committed an assault on a Canadian official thirteen miles above the mouth of the Stikine River. For this he was convicted at Victoria, B.C., and condemned to imprisonment. He complained to the United States Government and claimed its protection on the ground of citizenship, and the Secretary of State presented the case to the British Government. The Canadian Government caused a survey to be made, and the spot where the assault occurred was declared to be American territory; and the Canadian Privy Council, on the communication of the British Foreign Office, decided that the crime was committed in American territory, and that Martin must be released, which was accordingly done.

When Captain Moore, the discoverer of the White Pass, desired in 1888 to pre-empt the land where Skagway now stands, at the head of Lynn Canal, he applied to the Government Land Office at Victoria for that purpose, but was told that the land in question was not subject to the Dominion, and that he must make his application in Washington.

The circumstances attending the removal of the remarkable mission of the Rev. William Duncan to the Metlakahtla Indians illustrates still further the previous unquestioned understanding as to the boundary. This band of Indians had been remarkably civilized and Christianized by the devoted missionary, but, as the story was told us as we sailed by the mission last July, he found he could hold them to temperance only by substituting some milder liquor for the communion wine. The British bishop did not deem that he could permit this. Mr. Duncan therefore determined to remove out of British territory and take his Indians with him. He applied to the

American Government, and Annette Island was conveyed to him. Thither he removed, followed by his people, and there has maintained, with unabated success, his happy island village. Under the new claim of Canada, this island would be part of the Dominion.

The general administration of the territory has always been discharged by America since her purchase of it from Russia in 1867. She has established and maintained custom-houses, post-offices, light-houses, and patrolled the coast since settlements have sprung up along it.

The settlers are in great part her citizens, and the sentiment among them is almost universal in favour of her claim. At Skagway last summer, we found but one person who advocated cession to Canada, and he was a hotel clerk, who quite frankly discussed it as advantageous to trade.

The claim of Canada, in its original integrity, seems, however, not to be now insisted upon, but the contest seems to have narrowed down to one over the possession of a harbour near the head of the Lynn Canal.

On July 21, 1899, Sir W. Laurier and Senator Fairbanks, the heads of the Joint High Commission dealing with this subject, decided on an indefinite postponement of the date of re-assembling. On July 22, Sir Charles Tupper, leader of the opposition in the House of Commons at Ottawa, bitterly denounced the course of the American Government and press as to this boundary, and suggested retaliatory measures. The Premier, Sir W. Laurier, replied with more moderation, but regretted the unsatisfactory condition of the negotiations, and said, as compromise seemed almost hopeless, only two alternatives appeared to him logically to remain, namely, arbitration or an appeal to arms, but he disclaimed contemplation of the latter, counselled patience and non-exclusion of American miners, and declared for arbitration.

The Hon. David Mills, Minister of Justice, has presented the Canadian side in a New York newspaper, saying, as to

the Lynn Canal, "Why should we abandon it? It is ours; why should we not have it?"

The objection to this proposition is that, under a convention consummated seventy-three years ago, language was used which, in the judgment of both high contracting parties and of the whole world, gave this territory to Russia. Forty-four years afterwards the United States bought it of Russia, relying upon that convention as so universally understood and acted upon. Thirty-one years thereafter this understanding remained and was acted upon before any communication was made by Great Britain calling it in question. It is submitted that it cannot be said that the language of the treaty is not susceptible of the construction so given. The most that can be said of the Canadian construction is that the language is perhaps subject also to that construction. In cases of ambiguity both American and English courts treat contemporaneous construction, by the creating (as in a law) or contracting parties, as controlling.

On October 20, a *modus vivendi* was announced to have been agreed on, fixing a provisional boundary on the Dalton trail, twenty-one and a quarter miles above Pyramid Harbour and on the Dyea and Skagway trails at the summits of the Chilcoot and White Passes. The objection urged to submitting the matter to arbitration is that it involves territory to which the United States deems itself entitled by purchase and by the long acquiescence of Great Britain during, substantially, three generations; that arbitration has meant in every case compromise; and that it would be quite as just to now ask Great Britain to arbitrate the question of her dominion over the St. Lawrence River because it is the convenient outlet for the great commerce represented at Chicago, as to ask America to submit to arbitration her dominion in the Lynn Canal because Canada has within a few years developed large interests in the hinter land. At a moment when Great Britain, our kindred nation in blood,

language, and forms of civilization, is involved in a painful contest elsewhere, the demands of Canada ought not to be pressed to raise any cause of alienation between us. Nor ought our Government to press its views in any unfriendly spirit.

It is sincerely to be hoped that the *modus vivendi* agreed upon indicates that upon further consideration the right may appear so clear that both sides may, without humiliation or irritation, recognize it and accede to it, and that, if the sovereignty remains with America at the head of the Lynn Canal, she may there, as well as on the opposite side of the Pacific, recognize the wisdom of maintaining the policy of "the open door."

CHARLES NOBLE GREGORY.

IV.—FEDERAL CONSTITUTIONAL DEVELOPMENT : A CONTRAST.

NOW that the Australian Colonies have agreed together upon the policy of a Federation, and are about to surrender their individual autonomy to a general government, 't may be interesting to see how the Federal idea has worked out in the two countries which have given it a fair and full trial—the United States and Canada. The writer has attempted in this article to take up the constitutions of these two countries separately, beginning with Canada, and to show, principally from decided cases, the course of their constitutional development. The result is certainly surprising, and shows the uncertainty which attends the interpretation of a written constitution by judges of a generation different from that in which it was framed.

In considering the effect to be given to the British North America Act, 1867, or, indeed, to any Act of Parliament,

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